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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-880
Regulation title	Child Support Enforcement Program
Action title	Incorporate 2003 and 2004 Code of Virginia amendments and clarify selected regulation sections
Date this document prepared	December 6, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The regulation encompasses all functions of the child support enforcement program. The regulation has been amended in the following areas: consideration of self-employment tax in computing a support obligation; treatment of unreimbursed medical/dental expenses; income withholding; distraint, seizure and sale; and disbursement of payments of less than one dollar. In the amended sections, references to the Code of Virginia, non-custodial parents and custodial parents have been updated. The regulation is being amended to accurately reflect the current mandates of the child support enforcement program. No changes have been made to the regulation since the proposed stage.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services took final action on 22 VAC 40-880, Child Support Enforcement Program, on December 6, 2006.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Title 63.2 Welfare (Social Services) of the Code of Virginia places the responsibility for providing child support enforcement services with the Department of Social Services. The State Board of Social Services is given the authority to make rules and regulations in §63.2-217 of the Code of Virginia.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulatory action is to update the current child support regulation impacted by 2003 and 2004 state legislation, and to amplify selected sections of the existing regulation. The amendments to the regulation are essential to protect the health and welfare of children and their families, and are intended to improve the effectiveness of the child support enforcement program. Collection of child support debt protects all citizens of Virginia, particularly its children. The increase in financial support to families enhances the quality of life through better health care, improved housing, and reduced stress. Further, collection of delinquent child support in public assistance cases results in a reduction of legal debts to the state, thus contributing to the General Fund.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Amendments to the regulation are as follows:

1. Outdated Code of Virginia cites and references to the noncustodial & custodial parents have been updated.

- 2. 22VAC40-880-200. Determining the amount of the child support obligation.

Changes to the regulation outline Division of Child Support Enforcement (DCSE) requirements for consideration of self-employment tax paid in the computation of a support obligation. Parents must provide tax returns.

- 3. 22VAC40-880-250. Periodic reviews of the child support obligation.

The provision on treatment of unreimbursed medical/dental expenses has been changed to conform state regulation to state law.

- 4. 22VAC40-880-270. Withholding of income.

The provision for sending notice of the income withholding order has been amended to conform state regulation to state law.

- 5. 22VAC40-880-350. Distrainment, seizure and sale.

A provision was added for the Department to negotiate for payment in full from the noncustodial parent before seized property is returned to the noncustodial parent.

- 6. 22VAC40-880-620. Disbursement of Payments.

A provision was added to give authority to the Department to not issue refund checks for less than one dollar. This provides greater cost effectiveness for the Department.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage to the public is a clearer, more concise administrative code that is in alignment with state law. This will ensure the continuation of equitable and efficient services to the citizens to Virginia from the Commonwealth’s employees, local employers and financial institutions. The amplification of the regulation will benefit the agency and Commonwealth by improving the collection of child support debt. There are no disadvantages to the public, agency, or Commonwealth as a result of the changes made to this regulation.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes have been made to the regulation since the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

There were no public comments during the period following the publication of the proposed stage.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
200	n/a	Gives the Department the ability to request financial information for the purpose of establishing a child support order.	<p>The self-employed parent must provide proof of the amount of self-employed tax paid by submitting schedule H of the most recent federal tax return.</p> <p>Rationale: An amendment to section 20-108.2 of the Code of Virginia in 2002 mandates that a self-employed parent be given credit for half of all self-employment tax paid by that parent when calculating their gross monthly income. In order to provide this credit for self-employed parents, DCSE needs their most recent tax return to determine the amount. This change amplifies the Code.</p>
250	n/a	Extraordinary medical expenses can currently be cited as a reason to request a financial review of a child support obligation.	<p>Reference to extraordinary medical expenses was deleted. A provision regarding sharing of medical expenses exceeding \$250 per child per year was added.</p> <p>Rationale: Current regulation does not reflect Virginia law that became effective 7-1-04. Change is necessary due to passage of Senate Bill 208 and House Bill 511.</p>

270	n/a	<p>The current regulation lists the withholding limitations of the Consumer Credit Protection Act, and the guidelines for modification of income withholding order.</p> <p>The current regulation addresses methods of serving the income withholding order.</p>	<p>The provision was stricken.</p> <p>Rationale: The provision is addressed in detail in the Code and the existing regulation adds no amplification.</p> <p>The provision was stricken.</p> <p>Rationale: The provision is addressed in the Code.</p>
350	n/a	<p>The current regulation allows a delinquent noncustodial parent to pay as little as \$500 and have the seized property returned.</p>	<p>The amended regulation provides that DCSE will ask for payment in full FIRST, and if unsuccessful, negotiate the currently established settlement (5% of the arrearage owed, or \$500, whichever is greater).</p> <p>Rationale: The current regulation gives DCSE little flexibility in negotiating a settlement. The amended language gives DCSE more room for negotiation for a larger lump sum payment from the NCP once property has been seized.</p>
620	n/a	<p>Not currently addressed in the Code.</p>	<p>New provision gives the Department the ability to not issue refunds less than \$1, except by written request.</p> <p>Rationale: Adding item D to this section regulates the cost effective practice of not refunding amounts less than one dollar. The DCSE computer system currently does not generate a check for amounts less than a dollar. Refunds less than one dollar will be manually generated upon written request.</p>

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods to accomplish the objectives of the applicable law. It is necessary to amend the Virginia Administrative Code. Changes are necessary to incorporate the 2003 and 2004 Code of Virginia amendments and to amplify sections to ensure global comprehension.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The promulgation of the proposed regulations will enhance the Department's ability to collect child support owed to families. Numerous studies indicate that the continuing involvement of both parents promotes stability and educational achievement in their children's lives. The collection and distribution of child support are critical to stability and autonomy for families who are striving to be self-sufficient. Over time, the sense of cohesiveness generated by joint parenting may promote healthier families. The Division's regulation plays a large part in increasing the disposable income of Virginia's families.